

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 790/2014

Reserved on 26th March, 2015
Date of pronouncement: 5th May, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391(1) to 394 read
with Section 100 of the Companies Act, 1956**

Scheme of Amalgamation of:

Shiva Agro Private Limited

Petitioner/Transferor Company

WITH

GSC Glass Limited

Petitioner/Transferee Company

**Through Mr. Ashish Middha, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(1) to 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Shiva Agro Private Limited (hereinafter referred to as the transferor company) with GSC Glass Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was incorporated under the Companies Act, 1956 on 13th August, 1986 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi

4. The transferee company was originally incorporated under the Companies Act, 1956 on 2nd March, 1989 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of G.S.C. Toughened Glass Private Limited. The company changed its name to GSC Glass Private Limited and obtained the fresh certificate of incorporation on 8th September, 2009. The company again changed its name to GSC Glass Limited and obtained the fresh certificate of incorporation on 16th March, 2010.

5. The present authorized share capital of the transferor company is Rs.30,00,000/- divided into 3,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.21,00,000/- divided into 2,10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.7,00,00,000/- divided into 7,00,000 equity shares of Rs.100/- each.

The issued, subscribed and paid-up share capital of the company is Rs.6,07,95,000/- divided into 6,07,950 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 144/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed that the proposed Scheme will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to affect internal economies and optimize productivity. It is further claimed that the proposed Scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“01 equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 53.44 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th June, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 144/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 27th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured

and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The Court, however, directed the petitioners to issue specific notice to the Corporation Bank, secured creditor of the transferee company at the time of moving second motion petition, calling for their objection, if any, to the Scheme.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 17th December, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) editions. Thereafter, the petitioner moved an application being CA 667/2015 seeking to place on record the amended gist of the Scheme; amended second motion petition with affidavits; valuation report dated 6th June, 2014; audited balance sheets of the petitioner companies as on 31st March, 2014 and the amended Scheme of Amalgamation. The said application was allowed vide order dated 26th March, 2015 and the documents filed along with the application were taken on record. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 31st December, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners have also claimed

that notice has been duly served on the Corporation Bank, secured creditor of the transferee company.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 3rd March, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 3rd March, 2015. Relying on Clause 10 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 14.1.7 of Part-III of the Scheme, it has been stated that the amalgamation shall be 'amalgamation in the nature of merger' as defined in Accounting Standard-14 as prescribed under the Companies (Accounting Standards) Rules, 2006 and shall be accounted for under the 'pooling of interests'

method in accordance with the said accounting standard. He further submitted that in Clause 23.1 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. Although both the Official Liquidator and the Regional Director, Northern Region, have not raised any objection to the proposed Scheme of Amalgamation but certain observations with regard to the share exchange ratio and appointed date of the Scheme as mentioned in the Scheme and in the second motion petition and also about the valuation report have been pointed out by them. Their first observation is that Board of Directors of the petitioner companies in their separate meetings held on 10th June, 2014 have approved the draft Scheme of Amalgamation and the share exchange ratio, derived through the valuation report prepared by C. S. Bhatnagar & Co., Chartered Accountants, but the valuation report was prepared by the aforesaid Chartered Accountants on 8th July, 2014 i.e. after the date of the Board Meetings. The second observation is that there is a difference between the share exchange ratio as suggested by the said Chartered Accountants and as mentioned in Para 14 of the Scheme. The last observation is that the appointed date of Scheme, as mentioned in the petition and the gist of the Scheme is 1st April, 2013 whereas as per the Scheme of the Amalgamation, the appointed date is 1st April, 2014. It may be noted that these observations were made by the Official

Liquidator and the Regional Director prior to filing and allowing of CA 667/2015 vide order dated 26th March, 2015. The annexures filed along with the application, viz. CA 667/2015 further answer the observations made by the Official Liquidator and the Regional Director, Northern Region.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 3rd March, 2015 of Mr. Sharanjit Singh, Director of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 31st December, 2014.

18. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation. Consequently, sanction is hereby granted to the amended Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order

will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of a number of records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- each should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1.0 lakh each by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks from today.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 05, 2015